

Minutes of the Professional Standards Committee
April 7, 2011

Present: Bill Beardsley, Geoffrey Block, Alva Butcher, William Haltom (chair), Andy Rex, and Michael Spivey

The meeting convened at 3:06 p.m. in Wyatt 326.

The minutes of March 24, 2011 were approved without amendment.

A subcommittee reported on its consideration of the Physics Department's proposed revisions to its evaluation standards and procedures. After some suggestions from the subcommittee on the department's first draft, the department recently submitted a revised document, which the subcommittee will consider in its next meeting before issuing a report to the full PSC.

The full PSC voted to accept the other subcommittee's report on questions pertaining to formal and informal appeals of faculty evaluations. That report is appended to these minutes. Of all the questions answered in the report, the PSC wished to highlight the fact that a formal appeal may be filed only in case of an alleged Code violation, but an informal appeal has no such restriction. This PSC will use this and other items in the attached report to tune up the buff document for next year's evaluation cycle.

The PSC considered the subcommittee report on the subcommittee's ongoing discussions with the English Department, concerning the department's proposed revisions to its evaluation standards and procedures. The PSC decided to defer further action on this issue until its next meeting, so that committee members who are not present today may contribute to the discussion.

The meeting adjourned at 3:49 p.m.

Respectfully submitted,

Andy Rex

Formal and Informal Appeals of Faculty Evaluations
Block, Butcher, Haltom Subcommittee
31 March 2011

Professors Block, Butcher, and Haltom met multiple times to discuss formal and informal appeals of faculty evaluations and consulted with the entire Professional Standards Committee on 10 February 2011.

This memorandum recounts the subcommittee's answers to questions posed by the Goldstein-Haltom subcommittee of the Professional Standards Committee in spring of 2009. The Goldstein-Haltom memorandum is attached as Appendix One. The minutes of the Professional Standards Committee from 4-25-08 constitutes Appendix Two.

The *Faculty Code* provides for informal appeals **only** for decisions or evaluations at the level of the department, program, or school. [For simplicity, evaluations by schools or programs or specially constituted committees will be represented by "department" or "departmental" below.] The current *Faculty Code* on page 14, lines 11-30 [www.pugetsound.edu/files/resources/3110_faculty-code-july2010.pdf; last accessed 22 March 2011] states that evaluatees may pursue concerns about the adequacy of departmental evaluations informally or formally. By contrast, that same passage provides for only formal appeals from decisions or evaluations of the Faculty Advancement Committee. Decisions, evaluations, or recommendations of the President to the Board of Trustees are subject to a third process that is not discussed in this memorandum.

As in its previous memorandum, the subcommittee proceeds according to the questions and sequence in the Goldstein-Haltom memorandum to the Professional Standards Committee in spring 2009.

The subcommittee notes in boldface its readings and recommendations. These readings and recommendations will be conveyed to the Professional Standards Committee in Appendix Three to this memorandum.

Question One

May an informal and a formal appeal be lodged by a single evaluatee concerning the evaluation of a single file? The *Faculty Code* says evaluatees may pursue concerns "... (1) informally or (2) formally." Should that "or" be read to be exclusive or inclusive?

The subcommittee opted to read the "or" inclusively.

As the Goldstein-Haltom memorandum noted, the words currently on page 14 at lines 11-15 of the *Faculty Code* <http://www.pugetsound.edu/files/resources/3110_faculty-code-july2010.pdf; last accessed 1 February 2011> may be read or interpreted inclusively or conjunctively.

Members of the subcommittee adduced at least two independent grounds for reading or interpreting the “or” to permit both an informal and a formal appeal by an evaluatee of decisions surrounding a single evaluation file. First, members agreed that had the exclusive, disjunctive “or” been intended, the language of the Code might have stated such an intention unmistakably. Second, a member favored the presumption that whenever the Code is ambiguous ambiguities should be resolved to the advantage of the less favored party – in this instance the evaluatee.

Question Two

If both informal and formal appeals regarding a departmental decision are permissible, is the informal appeal resolved first and the formal next; or might informal and formal appeals proceed simultaneously?

The subcommittee concluded that informal and formal appeals may proceed simultaneously.

Although members of the subcommittee might prefer that appeals of departmental evaluations be serial rather than simultaneous and that the informal appeal resolve matters before a formal appeal [or at least reduce the number of issues for a formal appeal by settling matters about which the head officer and the evaluatee reach an agreement], the Code explicitly limits informal appeals to commence within five working days of the completion of the evaluatee’s review of departmental decisions and documents and formal appeals to commence within ten working days of the completion of the evaluatee’s review of departmental decisions.

The subcommittee took no position on whether the language of the *Faculty Code* should be changed to prevent informal and formal appeals from proceeding at the same time.

The Professional Standards Committee may elect to inform the Faculty Senate that informal and formal appeals may proceed at the same time. If members of the faculty would like to sequence or stage appeals so that informal appeals triage issues or dispose of concerns and thereby reduce formal appeals or obviate them altogether, those faculty may compose language to their greater liking.

The subcommittee recommends that “the buff document” remind faculty that formal appeals must allege that the *Faculty Code* has been violated.

Question Three

Are evaluatees permitted more than “one round” of appeals? [The *Faculty Code* explicitly permits informal or formal appeals after a department makes its collective recommendation; after the FAC has recommended, only the formal

process is available; the decision of the president is subject to a third process beyond the immediate focus of the PSC.]

The subcommittee concluded that evaluatees are permitted more than one round of appeals at either the departmental or the FAC level or at each.

No language in the code proscribes or prescribes iterative appeals of departmental or FAC decisions, recommendations, or reports. The subcommittee opted not to read the absence of language in any way. Instead, the subcommittee decided to interpret the language in keeping with two considerations. The first has already been stated in this memorandum: When the Code is ambiguous or silent, uncertainties should be resolved to the advantage of the less advantaged party, the evaluatee. The second consideration was prudential. If departments must satisfy the evaluatee that the department has fulfilled or complied with recommendations or remedies fashioned by a formal hearing board, departments likely will do their best to negotiate with evaluatees mutually acceptable processes and procedures. The same seems true for evaluations by the FAC. In addition, the subcommittee noted that the availability of one or more additional rounds of appeals at the departmental level might spare the Faculty Advancement Committee the task of “adjudicating” departmental compliance with decisions issuing from a formal hearing board or even from an informal appeal. The subcommittee preferred that the FAC be spared such adjudicative deliberations beyond what the Code requires of the FAC in every case.

All of the above having been stated, the Faculty Code sketches a sequence of steps for formal appeals and for the aftermath of formal appeals on p. 24 [Chapter 3] in lines 6-39. The subcommittee and the Professional Standards Committee have each read those lines as stating that if the hearing board for a formal appeal finds a violation of the Code as alleged by the evaluatee, the hearing board may recommend that the file be returned to the body from which the evaluatee appealed. In that eventuality, evaluatee, evaluators, and evaluation would proceed as stated by the Code. If the hearing board for the formal appeal finds no violations of the Code as alleged by the evaluatee or if the hearing board elects **not** to recommend sending the file back to the body appealed from, the file moves to the next stage in the evaluation process [see lines 26-29].

Hence, the subcommittee recommends that the “buff document” include language or graphics or both that convey the following:

- **If a formal hearing board finds no violation, the file moves to the next stage, and the evaluatee may appeal if the next stage is the Faculty Advancement Committee but not if the next stage is review by the President; however,**
- **if a formal hearing board finds a violation and recommends that the file be sent back whence it came, then the evaluatee, the evaluators, and the process of evaluation must follow the Code, which entails that the evaluatee may formally appeal as the evaluation proceeds anew according to the Code.**

Question Four

Does the *Faculty Code* limit the time for an informal appeal? [The *Faculty Code* ... furnishes no explicit deadline for evaluatee and head officer. After he or she has reviewed the file, the evaluatee has five working days in which to challenge the departmental decision-making informally.]

The subcommittee decided that the Code does not limit the time that resolution of an informal appeal may or might take.

The subcommittee discovered in the Code no language that addressed how long an informal hearing might take. Rather than to substitute the judgment of the subcommittee or the PSC for the wording of the Code, the subcommittee recommended that the PSC acknowledge that nothing but good faith and professionalism governs the informal appeal. Limits on how long a formal appeal may go, by contrast, are stated in the Code [pp. 22-24; §6d(2) and §7i] to be ten (10) working days for probable cause decisions as well as for decisions after hearings have been conducted.

Question Five

Do differences in the working days allotted for informal and formal appeals **presume** that informal appeals may resolve minor issues expeditiously and thereby obviate a formal hearing board or limit the issues to be taken to a formal hearing board? Do the faculty **intend** the informal appeal to encourage reconciliation of evaluatees and evaluators – perhaps a “cooling off” period – or to triage issues before a formal appeal or both or neither? Is “the **spirit**” of The *Faculty Code* to prefer informal appeals because they are simpler and involve fewer faculty and less time than formal appeals and hearing boards do?

The subcommittee answered each of these three questions in the Goldstein-Haltom memorandum in the negative.

The subcommittee declined to construct presumptions of differences in wording, intentions behind passages of the Code, or spirits of the language of the Code. Such pretended exegesis, a member of the subcommittee opined, may strike colleagues as eisegesis.¹

Question Six

What is the significance of a slight difference in the grounds stated for each sort of appeal? [Informal appeals must address issues of fairness and

¹ Random House Webster’s Unabridged Dictionary on CD-ROM defines eisegesis as “...interpretation, esp. of Scripture, that expresses the interpreter's own ideas, bias, or the like, rather than the meaning of the text.”

adequacy of file and/or of process, while formal appeals may concern fairness, adequacy, and completeness.]

The subcommittee recommends that the “buff document” note that formal appeals must allege at least one violation of the Code, while informal appeals are under no such duty.

The Professional Standards Committee, in consultation with the subcommittee, speculated that formal appeals might have the extra criterion “completeness” because evaluatees must ground formal appeals in the Code while evaluatees may base informal appeals on unfairness or inadequacy not found in the Code. Beyond that speculation, the subcommittee recommends that PSC not to go.

The subcommittee also respectfully recommends that the PSC as a whole examine Chapter 3, Section 6, p. 18, lines 40-41 to see if the Code is consistent regarding the requirement that formal appeals allege at least one violation of the *Faculty Code*. Lines 40-41 state: “An evaluatee may allege that there have been violations of the code during the evaluation process.” The subcommittee suspect that the PSC will want to read that “may” as permission rather than as possibility. This reading by the subcommittee is supported by Chapter 3, Section 6, p. 19, lines 18-19: “To initiate a formal appeal, the evaluatee must submit a list specifying alleged violations of the code.”

Question Seven

Simultaneous informal and formal appeals would seem ill-advised because each could contradict or undermine the other. May/should the PSC do anything about that simultaneity?

The subcommittee counseled that the PSC neither say nor do anything about simultaneity.

The subcommittee agreed that running an informal appeal alongside a formal appeal poses problems, not the least of which is inconsistency or unsettledness of the file or the record or each. Like the PSC in 2008 [Appendix Two *infra*], however, the subcommittee discovered in the Code no words that proscribe simultaneity or prescribe precedence. Indeed, in light of the subcommittee’s answers to questions one through four *supra*, formal appeals may be underway [and thus subject to limits on the hearing board’s determination(s) and recommendation(s)] before evaluatees and head officers working expeditiously and in all good faith get the informal appeal over with. The subcommittee acknowledges the difficulties that simultaneity may pose, but finds no solution short of amendment of the code. The subcommittee is not prepared to recommend an amendment of the code.

Procedural Considerations

The subcommittee recommends that the issues, resolutions, and recommendations above be regarded as less than interpretations of “significant merit” within the meaning of the *Faculty Code*.

Any issues, resolutions, or interpretations above deemed to reach the standard of “significant merit” will compel the PSC to issue a formal written interpretation [see page 7, lines 7-14 of the Code online <www.pugetsound.edu/files/resources/3110_faculty-code-july2010.pdf; last accessed 27 March 2011>]. The PSC, of course, makes that decision.

The subcommittee further recommends that the PSC do as much as the PSC can to publicize its readings or interpretation through notice to the Faculty Senate and through emendations of the “buff document.”

Appendix One

Memorandum from Goldstein & Haltom regarding Informal and Formal Challenges

The subcommittee examined minutes and memoranda from 2007-2008 and *The Faculty Code* to uncover puzzles and questions about the processes by which evaluations are appealed either informally or formally. Our researches have raised so many issues of such complexity that we do not believe that the PSC can do its work responsibly in the short time remaining this academic year.

As the subcommittee and Committee review those issues, all should focus on what seems to be the central question: **Are informal challenges preliminary to formal challenges or alternatives to formal challenges?** Some colleagues read the code to “suggest” an informal first stage to challenging departmental² recommendations or procedures, to be followed by a formal second stage if the informal first stage does not satisfy the evaluatee. Others infer no such sequence and see two alternatives by which evaluatees might challenge evaluations by departments. Irrespective of what faculty may have intended, the *Faculty Code* does not resolve that central question.

Issues

Minutes and missives of the Professional Standards Committee [25 April 2008] disclosed many questions and conundrums:

² Please note that informal appeals are available under *The Faculty Code* only at the first level of evaluation: departments, programs, schools, or specially devised evaluation committees. **For simplicity, hereafter in this memorandum, the subcommittee uses “department” or “departmental” to stand for various entities that make recommendations to the Faculty Advancement Committee.**

1. May an informal and a formal appeal be lodged by a single evaluatee concerning the evaluation of a single file? The *Faculty Code* says evaluatees may pursue concerns “... (1) informally or (2) formally.” Should that “or” be read to be exclusive or inclusive?
2. If both informal and formal appeals regarding a departmental decision are permissible, is the informal appeal resolved first and the formal next; or might informal and formal appeals proceed simultaneously?
3. Are evaluatees permitted more than “one round” of appeals? [The *Faculty Code* explicitly permits informal or formal appeals after a department makes its collective recommendation; after the FAC has recommended, only the formal process is available; the decision of the president is subject to a third process beyond the immediate focus of the PSC.]
4. Does *The Faculty Code* limit the time for an informal appeal? [The *Faculty Code* Chapter III, § 4, b { p. 14, lines 11-30} furnishes no explicit deadline for evaluatee and head officer. After he or she has reviewed the file, the evaluatee has five working days in which to challenge the departmental decision-making informally.]
5. Do differences in the working days allotted for informal and formal appeals **presume** that informal appeals may resolve minor issues expeditiously and thereby obviate a formal hearing board or limit the issues to be taken to a formal hearing board? Do the faculty **intend** the informal appeal to encourage reconciliation of evaluatees and evaluators – perhaps a “cooling off” period – or to triage issues before a formal appeal or both or neither? Is “the **spirit**” of *The Faculty Code* to prefer informal appeals because they are simpler and involve fewer faculty and less time than formal appeals and hearing boards do?
6. What is the significance of a slight difference in the grounds stated for each sort of appeal? [Informal appeals must address issues of fairness and adequacy of file and/or of process, while formal appeals may concern fairness, adequacy, and completeness.]
7. Simultaneous informal and formal appeals would seem ill-advised because each could contradict or undermine the other. May/should the PSC do anything about that simultaneity?

The Informal Appeal – Textual Authorization

The *Faculty Code* on-line < <http://www2.ups.edu/dean/facgov/docs/faculty-code-jul2008.pdf>, accessed 15 April 2009> Chapter III, § 4, b OR p. 14, lines 11-30:

If after reviewing the file (non-confidential letters) or reviewing the file and receiving the head officer's summary of letters (confidential letters) the individual faculty member feels that he or she has been unfairly or inadequately evaluated by the department, school or program, that individual has the right to pursue those concerns (1) informally or (2) formally. (1) The evaluatee may pursue a challenge informally within five (5) working days of reviewing the file by notifying the head officer in writing of concerns about the departmental process and the contents of the file that are relevant to questions of fairness and adequacy. The head officer and the evaluatee shall attempt to resolve issues informally. A copy of the evaluatee's statement of concerns and a written statement on the results of the informal resolution process prepared by the head officer shall be forwarded to the Advancement Committee and included in the evaluatee's file. No informal resolution between the head officer and the evaluatee may remove materials from the file or set aside the provisions of this Code. (2) The evaluatee may pursue a challenge to the departmental evaluation formally by initiating an appeal as provided for in Section 6 of this chapter within ten (10) working days of reviewing the file. The appeal is limited to issues affecting fairness, completeness, and adequacy of consideration by the department in conducting the evaluation. If no challenge is raised informally or formally within the time limits specified, the Advancement Committee shall proceed with its deliberations.

The Formal Appeal – Textual Authorization

The *Faculty Code* on-line < <http://www2.ups.edu/dean/facgov/docs/faculty-code-jul2008.pdf>, accessed 15 April 2009> Chapter III, § 6, a, 2, a-b OR p. 19, lines 1-16:

(a) A formal appeal of the evaluation conducted by the department, school, or program is limited to issues affecting fairness, completeness, or adequacy of consideration by the department, school, or program in conducting the evaluation. The appeal must be initiated within ten (10) working days after the evaluatee has completed reviewing the evaluation file that the department, school, or program forwarded to the dean and the Advancement Committee (Chapter III, Section 4.b).

(b) A formal appeal of the evaluation conducted by the Advancement Committee is limited to questions of fairness, completeness, or adequacy of consideration by the Advancement Committee in conducting the evaluation. It may not raise questions about the evaluation at the departmental level unless the questions pertain to duties of the Advancement Committee specified in the code. The appeal must be initiated by the evaluatee within five (5) working days after receiving the Advancement Committee's recommendation (Chapter III, Section 4.c.(6)).

Appendix Two

Excerpt from the minutes of the Professional Standards Committee 25 April 2008

... 5. Charge 8: relationship between formal and informal challenges to the evaluation process Subcommittee members Fields and Share reported on their conversations with past PSC members and the Dean about what is at issue in the charge. The problem is a lack of

clarity in several aspects of Chapter III, Section 4, b of the Code, including the following: whether it is possible for both formal and informal challenges to be initiated, whether informal and formal challenges are to occur sequentially or simultaneously (if, in fact, two challenges can be initiated), whether there might be multiple “go arounds” for challenges or just one, and whether there is a time limit for the resolution of an informal challenge.

The PSC discussed the difference between the ... period for the formal and informal appeals, wondering whether that difference is to create space for a “cooling off” period and/or because of the time involved to convene members for a formal appeal.

A lack of parallelism was noted between the concerns on which a challenge might be based: for informal challenges, the code states that the evaluatee must notify the head officer in writing of “concerns about the departmental process and the contents of the file that are relevant to questions of fairness and adequacy,” while the informal appeal “is limited to issues affecting fairness, completeness, and adequacy of consideration by the department in conducting the evaluation.” It seems that “completeness” would also be a valid concern in an informal challenge and might, in many cases, be handled more effectively at the department level in an informal challenge.

The PSC affirmed that the spirit of the Code is that the informal challenge is preferred, when feasible, in that it is simpler (usually involving less time and fewer people). However, the PSC recognized that the 10-day time frame for initiating a challenge might, in effect, force an evaluatee to initiate a formal appeal when it appears that the informal appeal will not be resolved in time for the deadline to initiate a formal challenge.

Conducting a formal and an informal challenge simultaneously would likely hinder the chances of either or both being resolved satisfactorily.

It appears that a Code amendment is probably in order, to clarify some or all of these issues. The PSC will request that Charge 8 be folded over into 2008-09. ...

Appendix Three Summary of Subcommittee Recommendations

The subcommittee recommends that the Professional Standards Committee

1. read the *Faculty Code* to use “or” inclusively when it states that evaluatees may pursue concerns “... (1) informally or (2) formally;”
2. declare that informal and formal appeals may proceed simultaneously;
3. state in “the buff document” and perhaps elsewhere that formal appeals must allege that the *Faculty Code* has been violated, while informal appeals need not;

4. declare that evaluatees are permitted more than “one round” of appeal at the departmental level, the FAC level, or at each;
5. convey in “the buff document” the dichotomy that, if a formal hearing board finds no violation, the file moves to the next stage, and the evaluatee may appeal if the next stage is the Faculty Advancement Committee but not if the next stage is review by the President; but that, if a formal hearing board finds a violation and recommends that the file be sent back whence it came, then the evaluatee, the evaluators, and the process of evaluation must follow the Code, which entails that the evaluatee may formally appeal as the evaluation proceeds anew according to the Code;
6. note that the *Faculty Code* does not limit the time that resolution of an informal appeal may or might take;
7. decide that differences in the working days allotted for informal and formal appeals **neither** presume that informal appeals may resolve minor issues expeditiously **nor** presume the informal appeal will encourage reconciliation of evaluatees and evaluators **nor** prefer informal appeals;
8. examine Chapter 3, Section 6, p. 18, lines 40-41 to see if the Code is consistent regarding the requirement that formal appeals allege at least one violation of the *Faculty Code*. Lines 40-41 state: “An evaluatee may allege that there have been violations of the code during the evaluation process;”
9. act in no way about simultaneity of formal and informal appeals;
10. regard all of the subcommittee’s proposals and recommendations as of less than interpretations of “significant merit” within the meaning of the *Faculty Code*; and
11. publicize its readings or interpretation through notice to the Faculty Senate and through emendations of the “buff document.”